



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
|-----------------|-------------|----------------------|---------------------|------------------|

10/789,182

02/26/2004

Gary Piaget

2072/US/2

5273

80705

7590

03/11/2009

Nautilus, Inc.
c/o Dorsey & Whitney LLP
370 17th Street
Suite 4700
Denver, CO 80202

EXAMINER

CROW, STEPHEN R

ART UNIT

PAPER NUMBER

3764

MAIL DATE

DELIVERY MODE

03/11/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

| | | | |
|------------------------------|--------------------------------------|--------------------------------------|--|
| Office Action Summary | Application No. 10/789,182 | Applicant(s) PIAGET ET AL. | |
| | Examiner Steve R. Crow | Art Unit 3764 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 November 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 9-12, 176-179 and 252-266 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 11, 12 and 176-179 is/are allowed.
- 6) ☒ Claim(s) 9-10, 252-266 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|----------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>3-16-07; 11-24-08</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 9-10, 252, 258 are rejected under 35 U.S.C. 102(a,b) as being anticipated by Yoshimura (**US 20010016542 A1**).

AS stated by Yoshimura in paragraph 35: "FIGS. 5A to 5C are views illustrating a seventh embodiment of the present invention. The front portion of each of movable frames 77, 78 is pivotably affixed to an upright piece 76 a provided vertically at the front portion of a base 76 via a mounting axle 76b. The movable frames 77, 78 are provided rotatably with a pair of rollers 79, 80, respectively. Endless belts 81, 82 are tensely wound up being stretched between the pair of rollers 79, 80, respectively. The aforementioned movable frames 77, 78, the rollers 79, 80, and the endless belts 81, 82 constitute the right and left endless foot platforms R."

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which

Art Unit: 3764

said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 253-257,259-266 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yoshimura (US 20010016542 A1).

Yoshimura (US 20010016542 A1), as shown in figures 5-6, shows a medially located pivot axis 76b located on flange 76a. It is unclear whether the pivot axis is colinear with the roller pivot axes or offset from a plane defined by the roller, in which case the corresponding relationship between the elements would be described as a flattened triangular shape. The examiner contends that any generally small deviation in such a relationship would have been well within the purview of one skilled in the art, hence, it would have been obvious to modify the placement of the pivot means so as to be coplanar with the rollers, or offset from the rollers, as an obvious design choice to one skilled in the art.

3. Claims 253-254,260-261,264-266 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chang et al (383).

Chang et al discloses an exercise device, comprising: a frame 11; first and second treadles 122 each comprising: a belt, a treadle frame, a front rotation axis adjacent a end of the treadle frame, and a rear rotation axis adjacent a second end of the treadle frame, the belt positioned about the front rotation axis and the rear rotation axis;

wherein each treadle frame is pivotally coupled with the frame at a pivot axis between the front rotation axis and the rear rotation axis such that the

Art Unit: 3764

treadle is supported to pivot relative to the frame near its second end about the pivot axis.

As shown in figure 4, there are secondary pivot axes defined by the base at the lower end of the link 141 and by the forward link 142, whereby the treadles are indirectly coupled with the to frame for pivot motion with respect to the frame .

The examiner contends that it would have been obvious to try and modify the placement of the channel 112 and the rear pivot with respect to their proximity to the rear end, as an obvious design choice to one skilled in the art.

As to claims 253,260,261, *Chang* differs from these claims in that Chang does not specifically teach that the rotation axis of the pivot means with respect to the end rollers can be located in longitudinal alignment with the rollers. The examiner contends that it would have been obvious to modify the placement of the pivot means so as to be coplanar with the rollers, as an obvious design choice to one skilled in the art.

Allowable Subject Matter

4. Claims 11-12 and 176-179 are allowed.
- 5.

Conclusion

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL.**

Art Unit: 3764

See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Response to Arguments

7. Applicant's arguments with respect to the pending claims have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steve R. Crow whose telephone number is 571-272-4973. The examiner can normally be reached on Max Flex.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, LoAn Thanh can be reached on 571-272-4966. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3764

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

sc/Steve R Crow/
Primary Examiner, Art Unit 3764